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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUVENCIO DANIEL LOPEZ-SAENZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 05-71774

Agency No. A079-778-162

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 18, 2009^{**}

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Juencio Daniel Lopez-Saenz, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for asylum, withholding

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of removal, relief under the Convention Against Torture (“CAT”), and voluntary departure. Our jurisdiction is governed by 8 U.S.C. § 1252(a). We review for substantial evidence the agency’s adverse credibility determination. *Kaur v. Gonzales*, 418 F.3d 1061, 1064 (9th Cir. 2005). We deny in part and dismiss in part the petition for review.

We lack jurisdiction to review the agency’s determination that Lopez-Saenz’s asylum application was untimely because the underlying facts are disputed. *See Sillah v. Mukasey*, 519 F.3d 1042, 1043-44 (9th Cir. 2008).

Substantial evidence supports the agency’s adverse credibility determination because the discrepancies between Lopez-Saenz’s first and second asylum applications go to the heart of his claim of persecution, *see Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004), and because of the other implausibilities and inconsistencies in the record, *see Wang v. INS*, 352 F.3d 1250, 1258-59 (9th Cir. 2003); *see also Don v. Gonzales*, 476 F.3d 738, 743 (9th Cir. 2007) (upholding implausibility finding). Accordingly, Lopez-Saenz’s withholding of removal claim fails.

In addition, substantial evidence supports the agency’s denial of CAT relief because Lopez-Saenz’s CAT claim is based on the same statements found to be not credible and he does not point to any other evidence in the record that would

compel a finding that it would be more likely than not that he would be tortured if returned to Guatemala. *See Farah v. Ashcroft*, 348 F.3d 1153, 1157 (9th Cir. 2003).

Finally, we lack jurisdiction to review the agency's denial of voluntary departure. *See* 8 U.S.C. § 1229c(f).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.